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09/684,013	10/06/2000	Babak Rezvani	COR185-150117	9817

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Kenneth R DeRosa  
1650 Arch Street  
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Philadelphia, PA 19103

EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

3

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/684,013

Applicant(s)

REZVANI ET AL.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1. Claims 1-26 have been presented for examination with claims 1, 11, and 21 as independent.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not provide one of ordinary skill how the resource is embedded in firmware. Applicant is invited to point out where in the specification this feature may be explained.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 6-11, 13, 16-23, 25, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Aharoni et al. (USPN 6,014,694) (hereinafter Aharoni).

5. Referring to claim 1, Aharoni discloses a method of adaptively controlling resource behavior comprising the steps of:

providing a resource (i.e. video data) having at least one parameter (i.e. data rate) and at least one attribute (data rate value) (e.g. abstract) (in terms of the specification, p. 7, lines 1-3, it is taken that the Applicant has defined the term "attribute" as "the value of at least one of the resource's parameters");

providing a first controller (rate control unit 106) in communication with the resource for receiving parameters and an attribute (cols. 11-12);

generating at least one output attribute (i.e. new data rate level) corresponding to the first resource parameters (data rate) (col. 12, lines 20-24);

communicating the output attribute to the resource (col. 12, lines 20-24);

updating one of the at least one parameter of the resource (the sender throttles the packet sender to coincide with the necessary required bandwidth adjustments) (e.g. abstract; col. 12, lines 42-67);

whereby, the behavior of the first resource is modified in regard to the updated parameter (e.g. abstract; col. 11, lines 35-38).

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6. Referring to claim 3, Aharoni discloses the attribute (data rate value) received by the controller is external from the resource (the sending rate is calculated at the controller) (col. 16, lines 14-24).

7. Referring to claim 6, Aharoni discloses the resource is a plurality of resources (compressed video at various levels 214) and the controller (rate controller 222) controls each of the resources (Figure 15 and relevant portions of the disclosure).

8. Referring to claim 7, Aharoni discloses the resource is a plurality of resources (compressed video levels 1-N 214) and wherein there is a plurality of controllers, each associated with at least one of the resources (Aharoni discloses that each of the N video servers 216 may comprise the video server 18 (figure 2) described previously which includes a rate controller component 106) (Figure 15; col. 18, line 66 to col. 19, line 1).

9. Referring to claim 8, Aharoni discloses the resource and the controller communicate over the global computer network (Internet 218) (Figure 15).

10. Referring to claim 9, Aharoni discloses the resource is a data rate of a client on a computer network (data rate of data sent to a client) (Col. 16, lines 14-24).

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11. Referring to claim 10, Aharoni discloses the controller is part of a server on the computer network (i.e. video server) (Figures 1-4, 9).

12. Claims 11, 13, and 16-22 are rejected for similar reasons as stated above.

13. Referring to claim 23, Aharoni discloses the resource is computer hardware (i.e. video server with a data rate parameter) (e.g. abstract; Figures 1-15).

14. Referring to claims 25 and 26, Aharoni discloses the resource is an appliance wherein the appliance is a computer (col. 19, lines 1-3).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims \*\*\* are rejected under 35 U.S.C. 103(a) as being unpatentable over Aharoni.

17. Referring to claim 2, Aharoni discloses the invention substantively as described in claim 1. Aharoni does not specifically state that the attribute received by the controller comes from the resource, however it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Aharoni to provide the rate control generator with the sending rate and the bandwidth levels of the compressed data directly to the rate control generator in order to provide a more accurate reading to determine what level modifications are necessary for the bandwidth on the link, thereby reducing server processing and increasing throughput of the system.

18. Referring to claims 4 and 5, Aharoni discloses the invention substantively as described in claim 1. Aharoni does not specifically state that the resource has a user interface displaying the parameter and attributes, however it is well known in the art that network management software for a server has the ability to display real-time information regarding the data rates of the servers and types of data being transmitted. Therefore it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modify the system of Aharoni to include a real-time updateable user interface to allow human input and monitoring and to allow a more interactive environment.

19. Referring to claim 24, Aharoni discloses the invention substantively as described in claim 21. Aharoni does not specifically state that the resource is embedded in firmware. However it is well known in the art that firmware is merely a high-speed memory resource which can store a any amount of any type of data, including video data, data for quick retrieval. By this rationale it would have been obvious to one of ordinary skill in the art to modify the teaching to provide Aharoni the ability to embed the video data into firmware to provide high speed access to the data, thereby reducing server processing and increasing server throughput.

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. Omura et al. (USPN 6,430,620) discloses locating and retransferring lost data through the use of position number within a file.

22. Agarwal et al. (USPN 6,314,466) discloses providing random access to a multimedia object over a network.

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23. Edholm (USPN 6,600,721) discloses end node pacing for QoS and bandwidth management.

24. Yoshimura et al. (USPN 6,125,397) discloses data transfer apparatus using congestion recovery-type and congestion avoidance-type data transfers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (703) 305-7855. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JEA  
June 15, 2004

  
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